

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 56104 / July 19, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
RELEASE NO. 2647 / July 19, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12703

In the Matter of	:	ORDER INSTITUTING
	:	PUBLIC ADMINISTRATIVE
ERNST & YOUNG CHARTERED ACCOUNTANTS,	:	PROCEEDINGS PURSUANT
and DENIS O'HOGAN, FCA.	:	TO RULE 102(e) OF THE
	:	COMMISSION RULES OF
Respondents.	:	PRACTICE, MAKING
	:	FINDINGS, AND IMPOSING
	:	REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against Ernst & Young Chartered Accountants ("EYCA") and Denis O'Hogan ("O'Hogan") (collectively the "Respondents"), pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)].¹

II.

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement ("Offers") that the Commission has determined to accept. Solely for the

¹ Rule 102(e)(1)(ii) provides, in relevant part, that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it ... to any person who is found ... to have engaged in ... improper professional conduct.

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and over the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Proceedings pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds² that:

A. SUMMARY

This matter concerns improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice by the Respondents in connection with the reviews and audits of SmartForce PLC ("SmartForce" or the "Company") financial statements for the years ended December 31, 1999, 2000, and 2001 and quarterly reviews for the quarters ended in March 31 and June 30, 2002 (the "Restatement Period"). EYCA received approximately \$725,000 in fees for performing audit and review services.

SmartForce's securities traded publicly on NASDAQ beginning in April 1995. SmartForce's financial statements, which the Company included in its annual and quarterly reports during the Restatement Period, were materially false and misleading in that they overstated net income and revenue in some periods and understated net income and revenue in other periods by failing to comply with United States generally accepted accounting principles ("GAAP"). SmartForce prepared these financial statements by, among other things, recognizing revenue improperly from multi-element arrangements, reciprocal transactions, and reseller agreements. Several registration statements incorporated by reference SmartForce's financial statements for the restated periods.

The Respondents reasonably should have known that SmartForce's financial statements had not been prepared in conformity with GAAP. EYCA nonetheless issued unqualified audit reports on SmartForce's annual financial statements that opined that the Company's financial statements presented fairly the consolidated financial position and results of operations of SmartForce in conformity with GAAP and stated that the auditor had conducted the audits in accordance with United States generally accepted auditing standards ("GAAS"). The audit

² The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

reports were included in SmartForce's 1999, 2000, and 2001 Forms 10-K, which were incorporated by reference in various Forms S-3, S-4, and S-8 registration statements. EYCA issued consent letters agreeing to the incorporation by reference of its audit reports in these registration statements.

O'Hogan did not comply with GAAS in the conduct of the audits and the reviews, and thus engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice through repeated instances of unreasonable conduct.

B. RESPONDENTS

1. EYCA is located in Ireland and is a member firm of Ernst & Young Global ("E&Y Global"). EYCA employs over 800 people and holds itself out as one of the leading firms of auditors and business advisors in Ireland. EYCA served as SmartForce's independent accountant from 1994 until its merger with SkillSoft Corporation ("SkillSoft Corp.") in September 2002. EYCA issued unqualified audit reports on SmartForce's December 31, 1999, 2000 and 2001 consolidated financial statements. In those unqualified audit reports, EYCA represented, among other things, (i) that it had conducted its audits of SmartForce's financial statements in accordance with GAAS; and (ii) that in its opinion, based on its audits, the SmartForce financial statements presented fairly, in all material respects, the consolidated financial position and results of operations of SmartForce in conformity with GAAP.

2. Denis O'Hogan, age 57, is an Irish citizen. O'Hogan became a member of the Institute of Chartered Accountants in Ireland ("ICAI") in 1975, which is similar to being a certified public accountant in the United States.³ Chartered Accountants are accounting professionals, some of whom are authorized to provide audit and assurance services within Ireland. O'Hogan has been employed by or a partner of EYCA or its predecessor since 1978. O'Hogan became a member of the SmartForce engagement team around 1994 in connection with the Company's preparation of the registration statement for its initial public offering ("IPO"). After the IPO, O'Hogan served as the concurring partner on the account until 1999, when he became the engagement partner. O'Hogan remained as the engagement partner until the Company engaged in a merger in September 2002, after which Ernst & Young LLP ("E&Y LLP") served as the Company's auditor. As of June 3, 2005, O'Hogan ceased working on engagements involving SEC registrants pending the outcome of these proceedings.

C. THE COMPANY

On September 6, 2002, SmartForce, a public limited company organized under the laws of the Republic of Ireland, merged with SkillSoft Corporation (which was a corporation organized under the laws of Delaware) and changed its name to SkillSoft PLC ("SkillSoft").

³ Members of the ICAI use the designatory letters ACA for Associate Chartered Accountant of the Institute and FCA for Fellow Chartered Accountant of the Institute.

Although SmartForce emerged as the surviving entity, SkillSoft Corp. was deemed the acquirer for accounting purposes and the former SkillSoft Corp. management took over management of the acquiring company. SkillSoft maintains its principal executive offices in New Hampshire. SkillSoft provides an Internet-based management and technology platform for training courseware, seminars, and reference materials geared toward business and IT professionals. SkillSoft's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and trade on NASDAQ.

D. FACTS

1. The Merger Announcement Between SmartForce and SkillSoft Corporation and Subsequent S-4 Registration Statements

On June 10, 2002, SkillSoft Corp. and SmartForce issued a press release announcing that the two companies had signed a definitive agreement to merge in a stock-for-stock transaction. Shortly thereafter, SmartForce filed a registration statement on Form S-4 regarding the merger in which SmartForce's financial statements for the year ended December 31, 2001 were incorporated by reference and included an unqualified audit report by EYCA dated January 16, 2002. The registration statement became effective on July 31, 2002.

2. SkillSoft Detects the Improper Accounting Practices by SmartForce

Before the markets opened on November 19, 2002, SkillSoft announced that in the process of preparing SmartForce's closing balance sheet, SkillSoft identified several accounting irregularities that would require SkillSoft to restate SmartForce's historical financial statements for the three-year period ended December 31, 2001, and for the six months ended June 30, 2002.

Although the precise amount of the restatement was unknown at the time, SkillSoft estimated that SmartForce had prematurely recognized approximately \$35 million to \$40 million in revenue. The Company also announced that it was exiting certain business lines and that renewals from its corporate customers had slowed. After the announcement, SmartForce's stock price fell from \$4.63 per share to \$3.07 per share, a drop of 33.7 percent.

On September 22, 2003, SkillSoft filed with the Commission a Form 8-K/A, restating SmartForce's historical financial statements for the three-year period ended December 31, 2001, and for the six months ended June 30, 2002. Due to the nature and severity of the accounting errors and irregularities, E&Y LLP, SkillSoft's auditors, re-audited the annual financial statements pertaining to the Restatement Period. In the restatement, SkillSoft corrected multiple accounting irregularities consisting primarily of misapplication of certain revenue recognition principles by SmartForce, which had resulted in an overstatement of revenue by \$113.6 million and net income by approximately \$127 million during the Restatement Period.

3. Accounting for Software Sales

GAAP requires that revenue from the sale or license of software be recognized consistent with AICPA Statement of Position 97-2, Software Revenue Recognition ("SOP 97-2"). SOP 97-2 specifies the circumstances in which a company may recognize software license revenue upon delivery, and when a company must defer immediate revenue recognition. Software license revenue is generally recognizable upon delivery under SOP 97-2 if no significant production, customization or modification of software is required, if the remaining undelivered elements of the parties' arrangement are not essential to the functionality of the software, and if the following four basic criteria are met: (i) persuasive evidence of an arrangement exists; (ii) delivery has occurred; (iii) the vendor's fee is fixed or determinable; and (iv) collectibility is probable. Paragraph 28 of SOP 97-2 provides, among other things, that "if payment of a significant portion of the software licensing fee is not due until after the expiration of the license or more than twelve months after delivery, the licensing fee should be presumed not to be fixed or determinable." Moreover, when an arrangement involves multiple elements (e.g., software, upgrades, and consulting services), Paragraph 10 of SOP 97-2 requires that the fee be "allocated to the various elements based on vendor-specific objective evidence of fair value, regardless of any separate prices stated within the contract for each element. Vendor-specific objective evidence of fair value is limited to the following:

- The price charged when the same element is sold separately;
- For an element not yet being sold separately, the price established by management having the relevant authority; it must be probable that the price, once established, will not change before the separate introduction of the element into the marketplace."

Appendix B to SOP 97-2 states that the AICPA Accounting Standards Executive Committee (AcSEC) believes that the price for an element as included in a price list does not necessarily represent vendor-specific objective evidence of fair value ("VSOE") for that element.

4. Accounting for Non-Monetary Transactions

Under GAAP, accounting for non-monetary transactions should be based on the fair value of the assets or services involved, if it can be determined within reasonable limits. See Accounting Principles Board Opinion No. 29, Accounting for Nonmonetary Transactions ("APB 29"). Paragraph 25 of APB 29 states, among other things, that fair value of a non-monetary asset "should be determined by referring to estimated realizable values in cash transactions of the same or similar assets, quoted market prices, independent appraisals, estimated fair values of assets or services received in exchange, and other available evidence." If neither the fair value of a non-monetary asset transferred nor the fair value of a non-monetary asset received in exchange is determinable within reasonable limits, the recorded amount of the non-monetary asset transferred from the enterprise may be the only available measure of the transaction. APB 29, para. 26.

5. Improper Accounting Practices by SmartForce

During the Restatement Period, SmartForce engaged in various improper accounting practices, including premature recognition of revenue from multi-element arrangements, improper recognition of revenue from reciprocal transactions, and premature recognition of revenue from reseller agreements. As a result of these improper accounting practices, SmartForce overstated its revenue by \$113.6 million and net income by approximately \$127 million.

The majority of the overstated revenue related to misapplication of the accounting guidance regarding VSOE and extended payment terms. More specifically, upon partial delivery, SmartForce recognized revenue prematurely despite not having VSOE for any of the elements sold. Similarly, SmartForce recognized revenue upon delivery from sales agreements that contained payment terms extending beyond 12 months even though the Company had an insufficient history of collecting on similar agreements without making concessions. The principal consequence of these practices was that SmartForce recognized revenue sooner than it otherwise should have.

In addition, during 2001, SmartForce also entered into several reciprocal non-monetary transactions with its customers, whereby the Company both sold and purchased goods or services without sufficient evidence to support the fair value of the goods or services exchanged. SmartForce recognized license revenue upon delivery of the software sold to its customer and recorded the acquisition from the customer as if it had been a separate, unrelated transaction. Instead, SmartForce should have recorded the sale and purchase as an exchange pursuant to APB 29, such that there would have been a gain only to the extent of any net cash received where the fair value of the assets or services involved could not be determined. Most of the reciprocal deals also included multi-elements and had extended payment terms. Revenue recognition from these transactions was also improper because the Company failed to meet the requirements under provisions of SOP 97-2 pertaining to VSOE and extended payment terms.

SmartForce also recognized revenue prematurely from reseller transactions, some of which were non-binding agreements and some of which contained termination clauses that allowed the customer to terminate the agreement prior to its expiration. For example, during the second and fourth quarters of 2001, SmartForce improperly recognized an aggregate of \$5.5 million of revenue from two non-binding agreements with a reseller.

Consequently, SmartForce's financial statements, which were included in the Company's annual and quarterly reports during the Restatement Period, were materially false and misleading in that they overstated net income and revenue by failing to comply with GAAP. Several registration statements incorporated by reference various SmartForce financial statements for the restated periods.

6. The Respondents' Improper Conduct

EYCA performed the reviews and audits of SmartForce's financial statements during the Restatement Period. The auditors were responsible for reporting on whether SmartForce's annual financial statements complied with GAAP and for conducting the audits and reviews in accordance with GAAS. The auditors, however, failed to adequately audit SmartForce's financial statements, which allowed the Company's overstatement of its revenue and earnings during the Restatement Period to go undetected.

The members of the SmartForce engagement team did not possess adequate technical training and proficiency, as required under GAAS, to audit the Company's financial statements. Except for O'Hogan, the SmartForce engagement team had little or no training or experience with software revenue recognition prior to being assigned to the SmartForce engagement. After joining the SmartForce engagement team, they received limited training on GAAP. O'Hogan, the audit engagement partner during the Restatement Period, was considered by EYCA knowledgeable with regard to software revenue recognition. O'Hogan conducted a training course for EYCA's staff on the subject of SOP 97-2 and made presentations to software companies that were clients of EYCA. As discussed below, however, O'Hogan failed to take exception to SmartForce's misapplication of key provisions of SOP 97-2.

a. Failure to Adequately Audit Multi-Element Arrangements

On numerous multi-element arrangements, the auditors improperly accepted management's conclusion that SmartForce had VSOE for each element of the multi-element arrangements and concurred with the Company's up-front revenue recognition for the delivered elements. Had the auditors adequately tested SmartForce's determination that it had VSOE for each element of the multi-element arrangements, they would have discovered that such conclusion did not conform with GAAP.

SmartForce did not have VSOE for each element of its multi-element arrangements because (1) the elements were not sold separately, and (2) the list price was not representative of fair value, as the Company offered its customers significant discounts from the list price. The discount percentage varied from customer to customer. The auditors did not assess whether each element had been sold separately and whether such sales were sufficient to support the fair value of those elements. In addition, the auditors failed to analyze properly how the size and variability of the discounts offered by SmartForce affected the suitability of the price list as a basis for VSOE.

b. Failure to Adequately Audit Agreements with Extended Payment Terms

In connection with numerous agreements with extended payment terms, the auditors improperly accepted management's conclusions that the fees were fixed or determinable. In doing so, the auditors simply accepted management's representation that the Company had a history of entering into such agreements and had successfully collected on them without granting

concessions. Had the auditors adequately tested SmartForce's collection history for agreements with extended payment terms, they would have discovered that the Company did not have a sufficient history of collecting on such agreements without making concessions.

c. Failure to Adequately Audit Reciprocal Non-Monetary Transactions

The auditors failed to adequately audit reciprocal non-monetary transactions between SmartForce and its customers. During 2001, SmartForce engaged in several reciprocal non-monetary transactions with certain customers. In these transactions SmartForce simultaneously sold and purchased products or services from the same customer, or the Company and the customer agreed to sell each other's products. SmartForce recognized the total amount from such sales as revenue.

Had the auditors adequately audited the non-monetary transactions, they would have discovered that SmartForce did not determine the fair value for such transactions, and accordingly, that the Company had improperly recognized revenue on those transactions. On some occasions, the auditors also failed to identify that the transaction was part of a reciprocal arrangement and thus failed to consider the applicability of APB 29.

d. Failure to Adequately Audit Non-Binding Agreements

During late June 2001, Smartforce entered into a letter agreement with a reseller, whereby the reseller agreed to "endeavor" to sell \$2 million of Smartforce courseware. More specifically, the letter agreement provided that the reseller would endeavor to bundle a minimum of 400,000 units of Smartforce training courses with other software. The reseller would pay SmartForce \$5.00 per each bundle shipped. SmartForce factored the receivable for this agreement, but was liable for any amounts unpaid by the reseller. SmartForce recognized the \$2 million as revenue for the quarter ended June 30, 2001.

In December 2001, Smartforce entered into another letter agreement with the same reseller, whereby the reseller again agreed to endeavor to sell \$3.5 million of Smartforce courseware. SmartForce factored the December endeavor receivable and again remained liable for any amounts unpaid by the reseller. SmartForce included the \$3.5 million as revenue in its Form 10-K for fiscal 2001.

SmartForce should not have recognized up-front the \$5.5 million as revenue because the reseller did not make a firm commitment.

While reviewing the work papers for the fourth quarter 2001 transactions, O'Hogan became concerned that the December transaction was not a firm commitment, and therefore the fee was not fixed or determinable. Based on the audit manager's explanation that the transaction was like the June endeavor agreement, for which SmartForce had received payment, and based on a purported representation from management that the endeavor agreement constituted a binding commitment, O'Hogan failed to take exception to the Company's improper revenue

recognition on this transaction. Reliance on any such purported representation, however, was unwarranted in light of the fact that the endeavor agreement on its face provided that the reseller would merely make an effort to bundle SmartForce's products.

e. Failure to Adequately Audit a Multi-Element Arrangement

In mid-June 2001, SmartForce executed a three-year multi-element arrangement with a customer. The arrangement entitled the customer to use (i) SmartForce's platform and generic courseware, and (ii) third party content that SmartForce would customize. The third party content consisted of software developed by a private company. The total price charged by SmartForce for the arrangement was \$5 million, of which \$800,000 was applied toward the license for the SmartForce platform and generic courseware, while the remaining \$4.2 million was earmarked for the third party content. The agreement obligated the customer to make two payments of \$2.5 million to SmartForce, on July 6, 2001, and October 5, 2001.

During the quarter ended September 30, 2001, Smartforce recognized revenue on this multi-element arrangement ratably. Contrary to GAAP, in its fourth quarter 2001, however, SmartForce reversed most of the deferred revenue balances and recognized a sum of approximately \$3.9 million in revenue. Accordingly, for fiscal 2001, SmartForce recognized \$4.3 million on this arrangement and improperly included that revenue in the Company's Form 10-K for the year ended December 31, 2001.

In January, 2002, the audit manager reviewed and initialed a deferred revenue listing that clearly reflected that \$3.9 million of the deferred revenue from the transaction with the customer had been taken into revenue. Notwithstanding this red flag, the audit manager failed to follow up on the matter and the auditors failed to discover that SmartForce had improperly recognized revenue from the arrangement.

f. Other Aspects of Respondents' Inadequate Audit

The Respondents' audit work was inadequate in other ways as well. For example, the auditors failed to take exception to revenue recognition from agreements that had effective dates but which did not indicate the date of execution, as well as to recognition of \$2.4 million in revenue from an agreement that allowed either party to terminate the obligation without cause. Such termination clause rendered the fee not fixed or determinable.

The auditors also failed to document alleged representations made by SmartForce's management and certain procedures purportedly performed during the audits. For example, notwithstanding O'Hogan's purported reliance on management's representation that the endeavor phrase constituted a binding agreement in reaching his conclusion that the Company had properly recognized revenue on the re-seller transaction, he did not document that representation in the work papers. On several occasions, the auditors failed to document how they concluded that delivery had occurred and that the fee was fixed or determinable in light of the extended payment terms.

E. LEGAL DISCUSSION

Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides, in part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Rule 102(e)(1)(iv) defines improper professional conduct with respect to persons licensed to practice as accountants.

As applicable here, improper professional conduct means “repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.” Rule 102(e)(1)(iv)(B)(2). As stated below, O’Hogan acted unreasonably in failing to detect SmartForce’s failure to comply with GAAP and in failing to comply with GAAS during EYCA’s audits and reviews of the Company’s financial statements during the Restatement Period.

1. Training and Proficiency of an Auditor

Regulation S-X, 17 CFR § 210 et seq., prescribes the qualifications of accountants and the contents of the accountants' reports that must be submitted with corporate financial statements. In particular, 17 CFR § 210.1-02(d) requires that the financial statements of a public corporation must be audited by an accountant in accordance with GAAS. GAAS requires that the audit be performed by “a person or persons having adequate technical training and proficiency as an auditor.” AU § 210.01. GAAS requires that auditors be assigned “to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining.” AU § 230.06.

2. Professional Care and Skepticism, Evidential Matter and Management Representations

GAAS provides that “[d]ue professional care is to be exercised in the planning and performance of the audit and the preparation of the report.” AU § 230.01. Among other things, due professional care requires that an auditor exercise professional skepticism, defined as “an attitude that includes a questioning mind and a critical assessment of audit evidence.” AU § 230.07. “Gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence.” AU § 230.08. “In exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.” AU § 230.09.

GAAS also requires that “[s]ufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.” AU § 326.01. “To be competent, evidence, regardless of its form, must be both valid and relevant.” AU § 326.21. In addition, the auditor should “recognize the possibility that the financial statements may not be fairly presented

in conformity with generally accepted accounting principles . . .” and should “consider relevant evidential matter regardless of whether it appears to corroborate or contradict the assertions in the financial statements.” AU § 326.25. Management representations “are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit.” AU § 333.02.

3. Audit Working Papers

GAAS also provided that “the auditor should prepare and maintain working papers . . .” and that “[t]he information contained in working papers constitutes the principal record of the work that the auditor has done and the conclusions that he has reached concerning significant matters.” AU § 339.01. Working papers ordinarily should include documentation showing that, among other things, “[t]he audit evidence obtained, the auditing procedures applied, and the testing performed have provided sufficient competent evidential matter to afford a reasonable basis for an opinion . . .” AU § 339.05.⁴

4. Deficiencies

a. EYCA

During the three-and-one-half years of the Restatement Period, EYCA failed to ensure that the engagement was adequately staffed, and that the auditors had the training and qualifications appropriate for the specific engagement and level of responsibilities assigned. As a result, EYCA failed to assign auditors with the requisite technical training and proficiency in auditing software companies to the SmartForce engagement. In addition, the audit staff assigned was neither adequately trained in the applicable accounting requirements for software companies nor properly supervised during the engagement. Hence, the engagement team reached erroneous conclusions during its reviews and audits of the SmartForce financial statements.

b. O’Hogan

O’Hogan placed undue reliance on management’s representations and failed to, among other things, obtain sufficient competent evidential matter to ensure that the Company (i) had a history of collecting on contracts with extended payment terms without making concessions; (ii)

⁴ The content of AU § 339 was replaced in or about January 2002 (effective for audits begun on or after May 15, 2002).

had documented verifiable VSOE for each element of the multi-element arrangements; and (iii) could establish fair value for the reciprocal transactions. Moreover, O'Hogan failed to document an alleged management representation upon which he placed reliance to support an opinion that revenue was properly recognized.

Accordingly, O'Hogan failed to comply with GAAS. He failed to exercise due professional care in violation of AU § 230.01; failed to maintain an attitude of professional skepticism in violation of AU § 230.07; failed to obtain sufficient competent evidential matter in violation of AU § 326.01; and failed to document evidence obtained in violation of AU § 339.05; the audit manager also lacked adequate technical training and proficiency and was not supervised properly by O'Hogan in violation of AU § 210.01 and § 230.06.

F. FINDINGS

Based on the foregoing, the Commission finds that EYCA and O'Hogan engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Specifically, EYCA and O'Hogan engaged in repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

G. REMEDIAL STEPS TAKEN BY EYCA SINCE ITS AUDITS OF SMARTFORCE

Since its audits of SmartForce, EYCA has undertaken remedial steps regarding risk management, audit procedures, staffing of engagements, and training of its staff.

H. UNDERTAKINGS BY RESPONDENTS

1. *Ongoing Cooperation:* Respondents shall cooperate fully and reasonably with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Respondents have undertaken:

- a. To produce, on reasonable notice, without service of a notice or subpoena, any and all relevant documents and other information reasonably requested by the Commission's staff;
- b. EYCA shall use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. EYCA shall use its best efforts to cause its employees to appear and testify truthfully and completely, on reasonable notice, without service of a notice or subpoena in such investigations, depositions, hearings or trials as may reasonably be requested by the Commission's staff; and

- d. If requested by the Commission's staff, Respondent O'Hogan shall agree to be interviewed by the Commission's staff at such times as the staff reasonably may direct, and to appear and testify truthfully and completely, on reasonable notice, without service of a notice or subpoena in such investigations, depositions, hearings or trials.

I. ADDITIONAL UNDERTAKINGS BY EYCA

1. Within 10 days of the issuance of this Order, EYCA undertakes to pay \$725,000 to the United States Treasury, which represents the amount of EYCA's fees for reviewing and auditing SmartForce's financial statements between 1999 and June 2002. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies EYCA as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Carlos Costa-Rodrigues, Boston District Office, Securities and Exchange Commission, 33 Arch Street, Twenty Third Floor, Boston, MA 02110.

2. *Training in Generally Accepted Accounting Principles and PCAOB Standards:* EYCA shall ensure that training is provided to its audit professionals prior to assignment to SEC registrant engagements, in the requirements of GAAP and GAAS – including SOP 97-2 and APB 29, and PCAOB Standards – that is consistent and appropriate in light of the roles and expectations for that audit professional on each specific engagement.

3. *Fraud Detection Training:* EYCA shall ensure that its audit professionals assigned to SEC registrant engagements undergo fraud detection training conducted by the Association of Certified Fraud Examiners or another comparable organization. Such training must be completed within 12 months from the date of the Order. The training will include techniques in detecting and responding to possible fraud by audit clients or by employees, officers or directors of audit clients.

4. *Personnel Assignments to SEC Registrant Engagements:* EYCA shall improve implementation of its written policies and procedures to provide reasonable assurance that personnel assigned to audits and SAS 100 interim reviews of SEC registrant engagements will have the skills, training and competencies necessary to fulfill the roles and responsibilities expected of them on the particular engagement. Assignment considerations will include such factors as: engagement size and complexity; specialized experience and expertise required; personnel availability and the involvement of supervisory personnel; timing of the work to be performed; and continuity and rotation of personnel.

5. *Professional Development Program:* EYCA shall maintain a professional development program designed to provide reasonable assurances that personnel assigned to

audits and reviews of SEC registrants participate in professional development activities in accordance with firm guidelines and in subjects that are relevant to their responsibilities.

6. *Qualifications of SEC Registrant Engagement Personnel:* EYCA shall adopt and implement written policies and procedures for documenting the qualifications, training and current responsibilities of senior engagement personnel assigned to each SEC registrant audit engagement. EYCA shall adopt written policies and procedures to ensure that the engagement team on SEC registrant engagements includes members who have the requisite skills, training and experience in light of the characteristics of the registrant and risk involved.

7. *Documentation of Significant Consultation:* EYCA shall adopt and implement written policies and procedures designed to provide reasonable assurance that work papers prepared in connection with the audits of the financial statements of SEC registrants include documentation of significant consultations with the filing reviewers, firm specialists or others within or without the firm, as required by PCAOB rules. The documentation of such consultations should be in accordance with PCAOB rules.

8. *Distribution of Order:* EYCA shall distribute a copy of this Order to all of its audit professionals within 10 business days after entry of the Order.

9. *Certification of Compliance with the Undertakings:* At the end of one year from the entry of this Order, EYCA shall certify in writing to the Commission staff that it is in compliance with the undertakings set forth herein.

In determining whether to accept the Respondents' Offers, the Commission has considered these undertakings and the remedial acts already undertaken by EYCA.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondents' Offers.

Accordingly, it is hereby ORDERED, effective immediately, that:

- a. EYCA is censured pursuant to Rule 102(e)(1)(ii).
- b. O'Hogan is denied the privilege of appearing or practicing before the Commission as an accountant.
- c. After two (2) years from the date of this Order, O'Hogan may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that O'Hogan's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that: (a) O'Hogan, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective; (b) O'Hogan, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB or equivalent Irish organization and that inspection did not identify any criticisms of or potential defects in O'Hogan's or the firm's quality control system that would indicate that O'Hogan will not receive appropriate supervision or, if the PCAOB has not conducted an inspection, has received an unqualified report relating to his, or the firm's, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions; (c) O'Hogan has resolved any disciplinary issues with the PCAOB or equivalent Irish organization, and has complied with all terms and conditions of any sanctions imposed (other than reinstatement by the Commission); and (d) O'Hogan acknowledges his responsibility, as long as O'Hogan appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

d. The Commission will consider an application by O'Hogan to resume appearing or practicing before the Commission provided that his chartered accountant license is current and he has resolved any disciplinary issues with the applicable Irish Institute of Chartered Accountants. However, if licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration

of, in addition to the matters referenced above, any other matters relating to O'Hogan's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary